

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 17-873V

Filed: November 21, 2018

UNPUBLISHED

BENITA GOLDSTEIN, Personal
Representative of the Estate of
STEWART GOLDSTEIN ,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Processing Unit (SPU); Joint
Stipulation on Damages; Influenza
(Flu) Vaccine; Guillain-Barre
Syndrome (GBS)

Nancy Routh Meyers, Ward Black Law, Greensboro, NC, for petitioner.

*Mallori Browne Openchowski, U.S. Department of Justice, Washington, DC, for
respondent.*

DECISION ON JOINT STIPULATION¹

Dorsey, Chief Special Master:

On June 27, 2017, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that her husband, Stewart Goldstein, suffered Guillain-Barré Syndrome (“GBS”) and complications from his illness, including death, after receiving the influenza vaccination on September 30, 2016. Petition at 1, ¶¶ 3, 11; Stipulation, filed Nov. 21, 2018, at ¶¶ 1-2, 4. Petitioner further alleges that her husband received the vaccination in the United States, that his untimely death was a result of his GBS, and that neither she nor any other party has filed a civil action or received compensation

¹ The undersigned intends to post this decision on the United States Court of Federal Claims' website. **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access. Because this unpublished decision contains a reasoned explanation for the action in this case, undersigned is required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

for her husband's injuries and death, alleged as vaccine caused. Petition at ¶¶ 3, 11, 13-14; Stipulation at ¶¶ 3-5. "Respondent denies that the flu vaccine caused Mr. Goldstein's alleged GBS, any other injury, or his death." Stipulation at ¶ 6.

Nevertheless, on November 21, 2018, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. The undersigned finds the stipulation reasonable and adopts it as the decision of the Court in awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **the undersigned awards** the following compensation:

A lump sum of \$387,000.00 in the form of a check payable to petitioner, as legal representative of the Estate of Stewart Goldstein. Stipulation at ¶ 8. This amount represents compensation for all items of damages that would be available under § 15(a). *Id.*

The undersigned approves the requested amount for petitioner's compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS

BENITA GOLDSTEIN, PERSONAL
REPRESENTATIVE OF THE ESTATE OF
STEWART G. GOLDSTEIN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 17-873V
Chief Special Master Dorsey
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Benita Goldstein ("petitioner"), as personal representative of the Estate of Stewart G. Goldstein ("Mr. Goldstein"), filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the "Vaccine Program"). The petition seeks compensation for injuries allegedly related to Mr. Goldstein's receipt of the influenza ("flu") vaccine, which vaccine is contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).
2. Mr. Goldstein received a flu vaccine on or about September 30, 2016.
3. The vaccine was administered within the United States.
4. Petitioner alleges that Mr. Goldstein suffered Guillain-Barre Syndrome ("GBS") as a consequence of the flu immunization he received on or about September 30, 2016. Mr. Goldstein passed away on December 5, 2016. Petitioner further alleges that Mr. Goldstein's death was a sequelae of his alleged vaccine-related injury.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on Mr. Goldstein's behalf as a result of his condition.

6. Respondent denies that the flu vaccine caused Mr. Goldstein's alleged GBS, any other injury, or his death.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of \$387,000.00 in the form of a check payable to petitioner, as legal representative of the Estate of Stewart Goldstein, representing compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that they have identified to respondent all known sources of payment for items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), including State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or entities that provide health services on a prepaid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity, and as legal representative of the Estate of Stewart Goldstein, on her own behalf, and on behalf of the Estate of Mr. Goldstein's heirs, executors, administrators, successors, and assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the United States Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Mr. Goldstein resulting from, or alleged to have resulted from, the flu vaccination administered on or about September 30, 2016, as alleged by petitioner in a petition for vaccine compensation filed on or about June 27, 2017, in the United States Court of Federal Claims as petition No. 17-873V.

13. Petitioner represents that she presently is duly authorized to serve as Personal Representative of the Estate of Stewart Goldstein, under the laws of the State of Florida. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as Personal Representative of the Estate of Stewart Goldstein. If petitioner is not authorized by a court of competent jurisdiction to serve as Personal Representative of the Estate of Stewart Goldstein at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of

competent jurisdiction to serve as legal representative of the Estate of Stewart Goldstein, upon submission of written documentation of such appointment to the Secretary.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the United States Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the items of compensation sought, is not grounds to modify or revise this agreement.


16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the flu vaccine caused Mr. Goldstein's alleged GBS, any other injury, or death.

17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, executors, administrators, successors, and/or assigns, as legal representatives of the Estate of Stewart Goldstein.


END OF STIPULATION

Respectfully submitted,


PETITIONER:


BENITA GOLDSTEIN

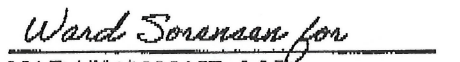
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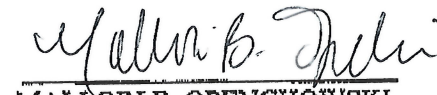
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Dated: 11/21/18